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Supreme Court, U.S.
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No. 00-

# Supreme Court of the United States

**Term October 2000**

**Roger W. Knight, petitioner**

**v.**

**Norm Maleng, King County Prosecuting Attorney, and Calvin G. Rapada, Deputy Prosecuting Attorney, respondents.**

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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34 pp

## I. Questions Presented For Review

A. Does *Younger* abstention doctrine apply to require federal courts to abstain from a 42 U.S.C. §1983 complaint that state court contempt proceedings to enforce child support orders violate the Antipeonage Act, 42 U.S.C. §1994, if state court judges are incompetent to hear such a claim based upon substantial personal interest in the outcome of such question due to 18 U.S.C. §1581, the criminal provision of the Antipeonage Act?

B. Does the Antipeonage Act, 42 U.S.C. §1994, cover child support as a "debt or obligation, or otherwise"?

C. Does practice by the courts of appeals of not treating their unpublished decisions as setting precedent exceed the grant of judicial power in Article III of the Constitution? *Anastasoff v. United States*, (8th Cir. 2000) 223 F. 3d. 898, found that it does.

## II. Table of Contents


I. Questions Presented For Review . . . . . i
II. Table of Contents . . . . . ii
III. Table of Authorities . . . . . ii
IV. Decision Below . . . . . 1
V. Statement of Grounds For Jurisdiction of this Court . . . . . 1
VI. Laws Involved in this Case . . . . . 1
VII. Statement of the Case . . . . . 6
VIII. Argument for the Allowance of the Writ . . . 7
A. *Younger* Abstention . . . . . 7
B. Antipeonage Act, Child Support . . . 11
C. Article III . . . . . 14
IX. Conclusion . . . . . 18


## III. Table of Authorities

Table of Cases


*Anastasoff v. United States,*(8th Cir. 2000) 223 F. 3d. 898 . . . . . i, 14, 15, 16, 17
*Anastasoff v. United States,*(8th Cir. 2000) 235 F. 3d. 1054 . . . . . 14
*Calder v. Bull,*(1798) 3 U.S. (3 Dall.) 386, 1 L. Ed. 648 . . . . . 9
*Caminetti v. United States,*(1917) 242 U.S. 470, 61 L. Ed. 442, 37 S. Ct. 192 . . . . . 13
*Clyatt v. United States,*(1905) 197 U. S. 207, 49 L. Ed. 726, 15 S. Ct. 429 . . . . . 9, 10
*Cohens v. Virginia,*(1821) 19 U.S. (6 Wheat.) 264, 5 L. Ed. 257 . . . . . 16

*Connecticut Nat. Bank v. Germain*,(1992)503
U. S. 249, 117 L. Ed. 2d. 391, 112 S. Ct. 1146 ..... 12, 13
*Consumer Product Safety Commission v.*
*GTE Sylvania*,(1980) 447 U.S. 102,
64 L. Ed. 2d. 766, 100 S. Ct. 2051 ..... 11, 12
*Dombrowski v. Pfister*,(1965) 380 U. S. 479,
14 L. Ed. 2d. 22, 85 S. Ct. 1116 ..... 7
*Dowling v. United States*,(1985) 473 U. S. 207,
87 L. Ed. 2d. 152, 105 S. Ct. 3127 ..... 10
*Estate of Cowart v. Niklos Drilling*,(1992) 505
U. S. 469, 120 L. Ed. 2d. 379, 112 S. Ct. 2589 ..... 13
*Gibson v. Berryhill*,(1973) 411 U.S. 564,
36 L. Ed. 2d. 488, 93 S. Ct. 1689 ..... 8, 9, 11, 14
*Griffin v. Oceanic Contractors, Inc*,(1976)
426 U.S. 88, 48 L. Ed. 2d. 495, 96 S. Ct. 1895 ..... 11
*Harris Trust & Savings Bank v. Salomon*
*Smith Barney, Inc.*,(2000) 530 U.S. 238,
147 L. Ed. 2d. 187, 120 S. Ct. 2180 ..... 12, 13
*Hartford Underwriters Ins. Co. v. Union*
*Planters Bank, NA*,,(2000) 530 U.S. 1,
147 L. Ed. 2d. 1, 120 S. Ct. 1942 ..... 12, 13
*Hughes Aircraft Co. v. Jacobson*,(1999) 525
U.S. 432, 142 L. Ed. 2d. 881, 119 S. Ct. 755 ..... 13
*James B. Distilling Co. v. Georgia*,(1991) 501
U. S. 529, 115 L. Ed. 2d. 481, 111 S. Ct. 2439 ..... 16
*Knight v. Knight*, (9th Cir. 1993)
Table 996 F. 2d. 1125, cert. den. 510 U.S. 979 ..... 15
*Marbury v. Madison*,(1803) 5 U. S. (1 Cranch)
137, 2 L. Ed. 60 ..... 16
*Mitchum v. Foster*,(1972) 407 U. S. 225,
32 L. Ed. 2d. 705, 92 S. Ct. 2151 ..... 8
*Moss v. Superior Court*,(1998) 71 Cal. Rptr.
2d. 215, 950 P. 2d. 59 ..... 14, 15

*Negronsott v. Samuels,*(1972) 407 U. S. 225,
32 L. Ed. 2d. 705, 92 S. Ct. 2151 ..... 11
*Ohio Civil Rights Commission v. Dayton
Christian Schools, Inc.,* (1986) 477 U.S.
619, 91 L. Ed. 2d. 512, 106 S. Ct. 2718 ..... 9
*Payne v. Tennessee,*(1991) 501 U.S. 808,
115 L. Ed. 2d. 720, 111 S. Ct. 2597 ..... 17
*Peonage Cases,*(D.C. Ala. 1903)
123 F. 671 ..... 10, 11
*Sibbach v. Wilson & Co.,*(1941) 312 U.S. 1,
85 L. Ed. 479, 61 S. Ct. 422 ..... 18
*Skelly v. Heidemann,* (9th Cir. 1994)
Table 26 F. 3d. 132, cert. den. 513 U.S. 1024 ..... 15
*Stanton v. Willson,*(Conn. 1803) 3 Day 37 ..... 13
*Ternes v. Berchard,* 9th Cir. No. 93-35913,
cert. den. 511 U.S. 1127 ..... 15
*United States v. Ballek,*(9th Cir. 1999)
170 F. 3d. 871, cert. den. 120 S. Ct. 318 ..... 13, 15
*United States v. Goldman,*(8th Cir. 2000)
228 F. 3d. 942, cert. den. 121 S. Ct. 1149 ..... 15
*United States v. International Business Machines,*(1996)
517 U.S. 843, 135 L. Ed. 2d. 124, 116 S. Ct. 1793 ..... 17
*United States v. Kozminski,*(1988) 487 U.S. 931,
101 L. Ed. 2d. 788, 108 S. Ct. 2751 ..... 10, 12
*United States v. Romo-Romo,*
(9th Cir. 2001) 246 F. 3d. 1272 ..... 12
*United States v. Ron Pair Enterprises, Inc.,*(1989)
489 U.S. 235, 103 L. Ed. 2d. 290, 109 S. Ct. 1026 ..... 13
*United States v. Sun-Diamond Growers,*(1999)
526 U.S. 398, 143 L. Ed. 2d. 576, 119 S. Ct. 1402 ..... 12
*United States v. Wiltberger,*(1820) 18 U.S.
(5 Wheat.) 76, 5 L. Ed. 37 ..... 10
*Willy v. Coastal Corp.,*(1992) 503 U.S. 131,
117 L. Ed. 2d. 280, 112 S. Ct. 1076 ..... 16, 17, 18

*Younger v. Harris*,(1971) 401 U.S. 37,
27 L. Ed. 2d. 669, 91 S. Ct. 746 . . . . . i, 7, 8, 11

Table of Laws

Constitution of the United States

Article III . . . . . i, 1, 2, 14, 16, 17, 18
Fifth Amendment . . . . . 18
Thirteenth Amendment . . . . . 2, 10, 14, 15

Laws of the United States

18 U.S.C. §1581 . . . . . i, 2, 3, 9, 10
28 U.S.C. §1254 . . . . . 1, 18
28 U.S.C. §1257 . . . . . 18
28 U.S.C. §1291 . . . . . 7, 18
28 U.S.C. §2283 . . . . . 3, 8
42 U.S.C. §1983 . . . . . i, 3, 4, 7, 8
42 U.S.C. §1994 . . . . . i, 4, 9, 10, 11

Laws of the State of Washington

chapter 7.21 RCW . . . . . 5
RCW 26.18.040 . . . . . 5, 6
RCW 26.18.050 . . . . . 5, 6, 10

Rules of Court

Eighth Circuit Rule 28(A)(i) . . . . . 16, 17
Ninth Circuit Rule 36-3 . . . . . 4, 16, 17, 18

Other Authorities

*Congressional Globe*,
39th Cong. 2d. Sess. p. 1571 . . . . . 13
www.geocities.com/rogerwknight/ . . . . . 14

## IV. Decision Below

The memorandum below, 2001 WL 66261, is not yet noted on a Table in the Federal Reporter.

## V. Statement of Grounds For Jurisdiction of this Court

The memorandum below was filed by the court of appeals on January 25, 2001. The Petition for Rehearing was denied on May 1, 2001. This Petition for Writ of Certiorari is presented within 90 days of the denial of the Petition for Rehearing.

This Court has jurisdiction to review this decision provided by 28 U.S.C. §1254(1).

## VI. Laws Involved in this Case

Provisions of the United States Constitution

Article III Section 1

The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III Section 2 clause 1

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Thirteenth Article of Amendment

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the United States, or anyplace subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Laws of the United States

18 U.S.C. §1581

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a

condition of peonage, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

28 U.S.C. §2283

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress

applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1994

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

Ninth Circuit Rule 36-3

Any disposition that is not an opinion or an order designated for publication under Circuit Rule 36-5 shall not be regarded as precedent and shall not be cited to or by this Court or any district court of the Ninth Circuit, either in briefs, oral argument, opinions, memoranda, or orders, except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel.

Revised Code of Washington

RCW 26.18.050

(1) If an obligor fails to comply with a support or spousal maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or spousal maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

(2) Service of the order to show cause shall be by personal service, or in the manner provided in the civil rules of superior court or applicable statute.

(3) If the order to show cause served upon the obligor included a warning that an arrest warrant could be issued for failure to appear, the court may issue a bench warrant for the arrest of the obligor if the obligor fails to appear on the return date provided in the order.

(4) If the obligor contends at the hearing that he or she lacked the means to comply with the support or spousal maintenance order, the obligor shall establish that he or she exercised due diligence

in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

(5) As provided in RCW 26.18.040, the court retains continuing jurisdiction under this chapter and may use a contempt action to enforce a support or maintenance order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order.

## VII. Statement of the Case

On January 30, 2000 papers related to the respondents' prosecution of Roger W. Knight for contempt for nonpayment of child support were served upon Mr. Knight. It is the first time that Mr. Knight has ever been prosecuted for contempt.

On February 1, 2000, Roger W. Knight filed the Complaint in the District Court for the Western District of Washington, No. C00-151Z.

On April 6, 2000 Mr. Knight filed his Motion for Summary Judgment.

On April 21, 2000 Norm Maleng and Calvin G. Rapada filed their King County Defendants' Response to Motion for Summary Judgment. On page 1 of this Response, is a request "that plaintiff's motion for summary judgment be denied and that this entire action be dismissed with prejudice." This was accepted by Mr. Knight and by the district court as a cross motion for summary judgment.

On May 24, 2000 Magistrate Judge Martinez filed his Report and Recommendation with respect to the summary judgment motions. App. pp. 6-10

On July 7, 2000 Judge Zilly entered his Order adopting the Report and Recommendation, denying Mr. Knight's Motion for Summary Judgment and granting the respondents' cross motion for summary judgment dismissing the case. App. pp. 4-5. On that same day, the district court entered the Judgment.

On July 17, 2000, Mr. Knight appealed to the Ninth Circuit Court of Appeals, No. 00-35625. The court of appeals had jurisdiction under 28 U.S.C. §1291.

On January 25, 2001, the court of appeals filed the memorandum affirming the district court's decision. App. pp. 2-3, 2001 WL 66261.

On May 1, 2001, Mr. Knight's Petition for Rehearing was denied. App. p. 1.

## VIII. Argument for Allowance of the Writ

### A. *Younger* Abstention Does Not Apply

When prosecutors act in criminal bad faith, *Dombrowski v. Pfister*, (1965) 380 U.S. 479, 482, 14 L. Ed. 2d. 22, 85 S. Ct. 1116 found that federal courts do not abstain from hearing a 42 U.S.C. §1983 action arising from such action. *Younger v. Harris*, (1971) 401 U.S. 37, 46-54, 27 L. Ed. 2d.

669, 91 S. Ct. 746 established the doctrine that federal courts ordinarily abstain where there are on going state court proceedings with some exceptions, including where a plaintiff can show that he lacks adequate remedy in the state's courts.

Where an exception to *Younger* abstention doctrine applies, *Mitchum v. Foster*, (1972) 407 U.S. 225, 32 L. Ed. 2d. 705, 92 S. Ct. 2151 found that 42 U.S.C. §1983 creates a statutory exception to 28 U.S.C. §2283.

Justice White wrote in *Gibson v. Berryhill*, (1973) 411 U.S. 564, 577, 36 L. Ed. 2d. 488, 93 S. Ct. 1689:

> *Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts. Such a course naturally presupposes the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved. Here the predicate for a *Younger v. Harris* dismissal was lacking, for the appellees alleged, and the District Court concluded, that the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District Court's conclusion was correct in this regard, it was also correct that it need not defer to the Board.

The Optometry Board was biased because its members each had a substantial personal interest in

the outcome of the case.

This finding is based upon a doctrine that was ancient when Justice Chase listed in *Calder v. Bull*, (1798) 3 U.S. (3 Dall.) 386, 388, 1 L. Ed. 648 "law that makes a man *a Judge in his own cause*;" as among the laws that is against all reason and justice for a people to empower a Legislature to enact.

The *Gibson* doctrine has not been limited in subsequent cases, including *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, (1986) 477 U.S. 619, 629, 91 L. Ed. 2d. 512, 106 S. Ct. 2718, to the exent that would affect Mr. Knight's claim to exception to *Younger* abstention.

Mr. Knight charges that contempt proceedings to coerce employment to pay child support violate the Antipeonage Act. The problem in presenting this argument in state court is that any violation of the civil right defined by 42 U.S.C. §1994 is the crime defined by 18 U.S.C. §1581.

*Clyatt v. United States*, (1905) 197 U.S. 207, 218, 49 L. Ed. 726, 15 S. Ct. 429 found that:

> In the exercise of that power Congress has enacted these sections denouncing peonage, and punishing one who holds another in that condition of involuntary servitude. . . . We entertain no doubt of the validity of this legislation, or its applicability to the case of any person holding another in a state of peonage, and this whether there be a municipal ordinance or state law sanctioning

such holding.

"In the exercise of that power" refers to Section 2 of the Thirteenth Amendment, "these sections denouncing peonage" refers to the Antipeonage Act.

> Federal crimes are defined by Congress, and so long as Congress acts within its Constitutional power in enacting criminal statute, this Court must give effect to Congress expressed intention concerning the scope of conduct prohibited.

*United States v. Kozminski,* (1988) 487 U.S. 931, 939, 101 L. Ed. 2d. 788, 108 S. Ct. 2751 citing *Dowling v. United States* (1985) 473 U.S. 207, 213-4, 87 L. Ed. 2d. 152, 105 S. Ct. 3127 and *United States v. Wiltberger*, (1820) 18 U.S. (5 Wheat.) 76, 95, 5 L. Ed. 37.

However sanctioned by RCW 26.18.050, if child support is included in the phrase "debt or obligation, or otherwise" in 42 U.S.C. §1994, then those who enforce such obligation with contempt proceedings to coerce employment are liable for the crime defined by 18 U.S.C. §1581. Judicial immunity does not apply to criminal liability. The *Peonage Cases*, (D.C. Ala. 1903) 123 F. 671, 684 found that a judicial official who corruptly exercised his duties to unlawfully convict defendant of crime and thus sell him into involuntary servitude for benefit of another, could not escape liability for peonage, because of the official character of his acts. It matters not whether condition of peonage

exists by virtue of a local law or in violation of such law, *Id.* at 676.

Due to the use of contempt proceedings in the Washington courts to coerce employment of support obligors, the judges of these courts have a substantial personal interest in exposure to criminal liability should Mr. Knight prevail. Mr. Knight set forth specific facts in declarations under penalty of perjury that the family court commissioners before whom he may present his argument regularly hear numerous contempt cases involving child support. This fact was not controverted or denied by the respondents. The judges and commissioners in the Washington courts are thus not competent to adjudicate the claim and Mr. Knight lacks adequate remedy in the state courts.

This case is clearly within the *Gibson* exception to *Younger* abstention.

B. Antipeonage Act Covers Child Support

This is an issue of statutory construction: Is child support included in the phrase "debt or obligation, or otherwise" in 42 U.S.C. §1994? In the briefing before the district court and the court of appeals, Mr. Knight cited *Negronsott v. Samuels*, (1993) 507 U.S. 99, 104, 122 L. Ed. 2d. 457, 113 S. Ct. 1119; *Griffin v. Oceanic Contractors, Inc.*, (1982) 458 U.S. 564, 570, 73 L. Ed. 2d. 973, 102 S. Ct. 3245; and *Consumer Product Safety*

*Commission v. GTE Sylvania*, (1980) 447 U.S. 102, 108, 64 L. Ed. 2d. 766, 100 S. Ct. 2051.

These rules of statutory construction were applied in *United States v. Romo-Romo*, (9th Cir. 2001) 246 F. 3d. 1272, 1274-5 citing *Hartford Underwriters Ins. Co. v. Union Planters Bank, NA*, (2000) 530 U.S. 1, 147 L. Ed. 2d. 1, 120 S. Ct. 1942, 1947; *United States v. Sun-Diamond Growers*, (1999) 526 U.S. 398, 407, 143 L. Ed. 2d. 576, 119 S. Ct. 1402; and *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, (2000) 530 U.S. 238, 147 L. Ed. 2d. 187, 120 S. Ct. 2180, 2191.

In *Sun-Diamond Growers* at 526 U.S. 406-8, Justice Scalia found that statutory definition of "illegal gratuity" requires that a gift made to a public official must be linked to a specific "official act" within the meaning of the statute. This is an affirmation of *Kozminski, supra* with respect to criminal statutes. It follows that these same rules of statutory construction apply to 18 U.S.C. §1581.

In *Hartford Underwriters* at 120 S. Ct. 1947, Justice Scalia wrote:

> . . . we begin with the understanding that Congress "says in a statute what it means and means in a statute what it says there," *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254, 112 S. Ct. 1146, 117 L. Ed. 2d. 391 (1992). As we have previously noted . . . when "the statute's language is plain, 'the sole function of the courts'" - at least where

> the disposition required by the text is not absurd - "is to enforce it according to its terms.'" *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L. Ed. 2d. 290 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485, 37 S. Ct. 192, 61 L. Ed. 442 (1917)).

In *Harris Trust* at 120 S. Ct. 2191, Justice Scalia quoted *Hughes Aircraft Co. v. Jacobson*, (1999) 525 U.S. 432, 438, 142 L. Ed. 2d. 881, 119 S. Ct. 755, which in turn quoted *Estate of Cowart v. Nicklos Drilling*, (1992) 505 U.S. 469, 475, 120 L. Ed. 2d. 379, 112 S. Ct. 2589 that in statutory construction, analysis begins with language of statute and quoted *Connecticut Nat. Bank* at 503 U.S. 254 "where the statutory language provides clear answer, it ends there as well".

By that rule, "debt or obligation, or otherwise" includes child support. If that is not a clear answer, Senator Lane in remarks on the Peonage Bill discussed the effect of New Mexican peonage on the "peon with a family to support". *Congressional Globe*, 39th Cong. 2d. Sess. p. 1571. The 1867 Congress intended to prohibit coercion of labor in liquidation of family support obligations. Congress was aware of such obligations and their enforcement in cases similar to *Stanton v. Willson*, (Conn. 1808) 3 Day 37, cited in *United States v. Ballek*, (9th Cir. 1999) 170 F. 3d. 871, 874 n. 2, cert. den., 120 S. Ct. 318.

Therefore, the California Supreme Court's findings in *Moss v. Superior Court*, (1998) 71 Cal. Rptr. 2d. 215, 223, 950 P. 2d. 59, 67 that legally requiring employment to enforce child support is not peonage is contrary to these above cited decisions regarding statutory construction.

At www.geocities.com/rogerwknight/ is an explanation of the history behind the Antipeonage Act and an argument that if the Thirteenth Amendment does not protect noncustodial parents, it does not protect any parent.

C. Practice of Not Treating Unpublished Opinions as Precedent Exceeds Judicial Power Granted by Article III

The court of appeals deviated from *Gibson, supra* without concern for creating precedent.

*Anastasoff v. United States*, (8th Cir. 2000) 223 F. 3d. 898 was released on August 22, 2000. Unaware of this decision, Mr. Knight filed his Brief of Appellant. On September 14, 2000, two weeks before the Brief of Appellee was due, Mr. Knight wrote a letter to Jeffrey Richard informing him that he intended to plead *Anastasoff* in his Reply Brief. The respondents elected not to address *Anastasoff* and Mr. Knight plead it in his Reply Brief. *Anastasoff* was vacated as moot on rehearing en banc, (8th Cir. 2000) 235 F. 3d. 1054, the federal government refunded the disputed tax. However,

*United States v. Goldman*, (8th Cir. 2000) 228 F. 3d. 942, 944, cert. den. 121 S. Ct. 1149 found that *Anastasoff* required unpublished decisions to be followed as precedent. This is a clear split with the practice of the other circuits.

Mr. Knight plead *Anastasoff* in the court of appeals because several previous cases alleging child support enforcement to violate the Antipeonage Act resulted in unpublished decisions that did not establish precedent. Some of these unpublished decisions were absurd: *Ternes v. Berchard*, 9th Cir. No. 93-35913, cert. den., 511 U.S. 1127, was dismissed on summary affirmance because "the questions on which the cause depends are so insubstantial as not need further argument." The California courts did not agree with this finding in *Moss, supra*. As to the Thirteenth Amendment, also raised by Mr. Ternes, *Ballek, supra* overruled that. *Skelly v. Heidemann*, (9th Cir. 1994), Table, 26 F. 3d. 132, cert. den., 513 U.S. 1024, found that "There was no requirement to work." This again is overruled by *Ballek*.

Mr. Knight himself challenged the threat of contempt proceedings before the court of appeals, *Knight v. Knight*, (9th Cir. 1993) Table 996 F. 2d. 1125, cert. den., 510 U.S. 979. This previous case started about 9 years before the present case and at that time there was no contempt prosecution against Mr. Knight. Therefore, neither res judicata nor collateral estoppel apply to this present litigation

because the facts are different.

The consequence of 9th Circuit Rule 36-3 and similar rules in the other circuits is that it frees them from the discipline of precedent. This is what *Anastasoff* found objectionable. These rules allow an appellate court to make a rule of law that applies only to the parties in a case. The appellate courts are free to deviate from precedent without setting precedent. Thus no consistent application of the law. The appellate courts are also free to avoid an issue by ruling on it without establishing precedent. Parties therefore cannot rely upon precedent.

"Inherent in every judicial decision is a declaration and interpretation of a general principle or rule of law." *Anastasoff* at 223 F. 3d. 899 citing *Marbury v. Madison*, (1803) 5 U.S. (1 Cranch) 137, 177-8, 2 L. Ed. 60. "This declaration of law is authoritative to the extent necessary for the decision, and must be applied in subsequent cases to similarly situated parties." *Anastasoff* at 223 F. 3d. 900 citing *James B. Distilling Co. v. Georgia*, (1991) 501 U.S. 529, 544, 115 L. Ed. 2d. 481, 111 S. Ct. 2439 and *Cohens v. Virginia*, (1821) 19 U.S. (6 Wheat.) 264, 399, 5 L. Ed. 257. *Anastasoff* thus found 8th Circuit Rule 28A(i), which is similar to 9th Circuit Rule 36-3, to expand the judicial power beyond the grant of Article III.

Federal courts are not free to extend judicial power beyond the grant of Article III, *Anastasoff* at 223 F. 3d. 905 citing *Willy v. Coastal Corp.*, (1992)

503 U.S. 131, 135, 117 L. Ed. 2d. 280, 112 S. Ct. 1076. *Willy* found that rules adopted by the courts can only apply if they do not expand judicial authority beyond the grant of Article III. *Anastasoff* at 223 F. 3d. 905 further found:

> Rule 28A(i) allows us to depart from the law set out in such prior decisions, without any reason to differentiate the cases. This discretion is completely inconsistent with the doctrine of precedent; even in constitutional cases, courts "have always required a departure from precedent to be supported by some 'special justification'" *United States v. International Business Machines Corp.*, 517 U.S. 843, 856, 116 S. Ct. 1793, 135 L. Ed. 2d 124 (1996) quoting *Payne v. Tennessee*, 501 U.S. 808, 842, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991) (Souter, J., concurring).

In *IBM*, at 517 U.S. 856, Justice Thomas wrote:

> . . . we frequently have declined to overrule cases in appropriate circumstances because *stere decises* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and percieved integrity of the judicial process."

quoting *Payne* at 501 U.S. 827.

9th Circuit Rule 36-3 extends the judicial power beyond the grant of Article III and thereby denies the parties due process of law required in

federal courts by the Fifth Amendment. Reliance upon the grants and limitations of judicial power in Article III is a necessary part of the right to due process.

While Congress granted this Court discretion upon writ of certiorari as to whether to exercise its appellate jurisdiction in cases out of the courts of appeals, 28 U.S.C. §1254 and out of the state supreme courts, 28 U.S.C. §1257, it did not grant the same discretion to the courts of appeals with 28 U.S.C. §1291. Therefore, the use of 9th Circuit Rule 36-3 to avoid creating a precedent impermissibly extends or restricts jurisdiction conferred by statute. *Willy* at 503 U.S. 135 citing *Sibbach v. Wilson & Co.*, (1941) 312 U.S. 1, 10, 85 L. Ed. 479, 61 S. Ct. 422.

## IX. Conclusion

For the reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| ROGER W. KNIGHT, | ) |
| Plaintiff-Appellant, | ) No. 00-35625 |
| v. | ) D.C.#CV-00-151-TSZ |
| NORM MALENG,King | ) Western Washington |
| County Prosecuting | ) (Seattle) |
| Attorney; et al., | ) |
| | ) ORDER |
| Defendants-Appellees.) | |

Before: BEEZER, O'SCANNLAIN and KLEINFELD, Circuit Judges.

Appellant's petition for panel rehearing is denied. No further filings will be accepted in this closed appeal.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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|---|---|
| ROGER W. KNIGHT, Plaintiff-Appellant, v. NORM MALENG,King County Prosecuting Attorney; CALVIN G. RAPADA. Deputy Prosecuting Attorney, Defendants-Appellees.) | ) No. 00-35625 ) D.C.#CV-00-151-TSZ ) Western Washington ) (Seattle) ) MEMORANDUM[1] |

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding
Submitted January 8, 2001[2]

Before: BEEZER, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, appellant's request for oral argument is denied.

Roger W. Knight appeals pro se the district court's summary judgment for defendants dismissing his 42 U.S.C. §1983 action, which sought to enjoin a state court contempt proceeding to enforce a court order the Knight make child support payments. We have jurisdiction pursuant to 28 U.S.C. §1291. We review de novo a denial of an injunction based on *Younger v. Harris*, 401 U.S. 37 (1971). *See Kenneally v. Lungren*, 967 F2d 329, 331 (9th Cir. 1992). We affirm.

The district court properly dismissed Knight's action pursuant to the Younger abstention doctrine because the state court proceedings were ongoing, implicated important state interests, and provided an adequate opportunity for Knight to litigate his federal claims. *See Delta Dental Plan of Cal., Inc. v. Mendoza*, 139 F.3d 1289, 1294 (9th Cir. 1998). Because the district court properly dismissed the action pursuant to the *Younger* abstention doctrine, we do not address Knight's remaining contentions concerning the district court's alternative grounds for dismissal. *See id.*

**AFFIRMED.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|---|---|---|
| ROGER W. KNIGHT, Plaintiff, v. NORM MALENG,King County Prosecuting Attorney; CALVIN G. RAPADA. Deputy Prosecuting Attorney, Defendants-Appellees.) | ) ) ) ) ) ) ) ) | CASE NO. C00-151Z ORDER |

The Court, having reviewed plaintiff's Motion for Summary Judgment the defendant's response, the Report and Recommendation of Magistrate Judge Ricardo S. Martinez, and the balance of the record, does hereby find and ORDER:

(1) The Report and Recommendation is approved and adopted;

(2) Plaintiff's Motion for Summary judgment is DENIED;

(3) Defendant's cross-motion for Summary judgment is GRANTED, and the complaint and action are DISMISSED; and,

(3) The Clerk is directed to send copies of this Order to plaintiff, to counsel of record, and to the Hon. Ricardo S. Martinez.

DATED this 6th day of July, 2000.

/s/
THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|---|---|
| ROGER W. KNIGHT, Plaintiff, | ) |
| v. | ) CASE NO. C00-151Z |
| NORM MALENG,King County Prosecuting Attorney; CALVIN G. RAPADA. Deputy Prosecuting Attorney, Defendants-Appellees.) | ) REPORT AND RECOMMENDATION |

Plaintiff Roger W. Knight, appearing pro se filed this civil rights complaint pursuant to 42 U.S.C. §1983, alleging that his constitutional rights are being violated by defendants in their efforts to enforce a child support order. Together with the complaint, plaintiff filed a motion for a preliminary injunction, seeking to enjoin the state court from holding a contempt hearing. Plaintiff's motion was denied, the contempt hearing went forward, and plaintiff was held in contempt for his willful and intentional refusal obey the lawful child support orders of the state court. See, Dkt. # 21, attachment. Now plaintiff has moved for summary judgment, contending that the use of contempt proceedings to enforce child support orders violates the Anti-Peonage Act, 42 U.S.C. §1994. Defendants have

opposed the motion, and ask that the action be dismissed without prejudice. Although not formally noted as a cross-motion for summary judgment, defendants' response has been acknowledged as such by plaintiff in his reply, and should be so treated by the court. Thus, after careful consideration of the record and the parties' memoranda, as well as plaintiff's litigation history, I conclude that plaintiff's motion for summary judgment should be denied, defendants' cross-motion should be granted, and the complaint and action dismissed.

DISCUSSION

As noted in the prior Report and Recommendation (Dkt. # 17), this case represents yet another in a series of attempts by plaintiff to avoid his child support obligation. See Knight v. Knight, C91-949Z, affirmed 996 F. 2d 1225 (9th Cir. 1993); Knight v. Knight, C929-1659R, affirmed 33 F. 3d 58 (9th Cir. 1994); Knight v. United States, C93-13WD, vacated and remanded, 12 F. 3d 1107 (9th Cir. 1993). The argument advanced by plaintiff here, namely that the state's use of contempt proceedings to enforce child support obligations violates the Thirteenth Amendment and the Anti-Peonage Act, 42 U.S.C. §1994, was summarily rejected by the Ninth Circuit Court of Appeals in one of plaintiff's prior cases. Knight, 996 F. 2d 1225 (unpublished disposition). As the court there stated, "Contempt proceedings for voluntary failure

to comply with court orders are a proper exercise of state power." Knight, 996 F. 2d at 1225, citing Hicks v. Feiock, 485 U.S. 624 (1987). The state statute specifies that "an obligor will not be held in contempt if he lacks the means to comply with the support order and has exercised due diligence trying to comply." Id. The state court's order makes it clear that plaintiff was held in contempt not for failing to pay child support, but for his intentional refusal to comply with a court order. Plaintiff could have avoided the contempt by a showing of an effort to comply with the order, but he declined to do so. Dkt. # 21, attachment. The court specifically found that plaintiff had the ability to comply with the support order. Id. Plaintiff's confinement on contempt charges thus does not amount to servitude for debt as contemplated by the Anti-Peonage Act, 42 U.S.C. §1994.

As a further basis for denial of plaintiff's motion and dismissal of the case, the court notes that this action presents a classic case for application of the abstention doctrine. Younger v. Harris, 401 U.S. 37 (1971). All of the necessary elements are present: (1) an ongoing state proceeding; (2) implication of important state interests; and (3) an adequate opportunity for the plaintiff to raise his federal questions in the state proceedings. Fresh International Corporation v. Agricultural Labor Relations Board, 805 F. 2d 1353, 1357-58 (9th Cir. 1986) (citing Middlesex

County Ethics Commission v. Garden State Bar Association, 457 U.S. 423, 432 (1982). Abstention is particularly appropriate in cases concerning domestic relations, where the primary issue concerns the status of parent and child. Thompson v. Thompson, 798 F. 2d 1547, 1558 (9th Cir. 1986); affd, 484 U.S. 174 (1988); citing Buchold v. Ortiz, 401 F. 2d 371, 372 (9th Cir. 1968). "[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States, and not to the laws of the United States." Ohio ex rel. Popovici v. Agler, 280 U.S. 379, 383 (1930). Even when a federal question is presented, federal courts decline to hear disputes which would deeply involve them in adjudicating domestic matters. Thompson, 798 F. 2d at 1558. The strong state interest in domestic relations matters, the superior competence of state courts in settling family disputes, and the possibility of incompatible federal and state court decrees all make federal abstention in custody and support cases appropriate. Robbins v. Robb, 638 F. Supp. 1320, 1323 (D. Montana 1986); citing Peterson v. Babbitt, 708 F. 2d 465, 466 (9th Cir. 1983).

Accordingly, plaintiff's Motion for Summary Judgment should be denied. Defendants' cross-motion, raised in the response to plaintiff's motion, should be granted, and the complaint and action dismissed. Proposed forms of Order and Judgment reflecting this recommendation are attached.

DATED this 23, day of May, 2000.

/s/
RICARDO S. MARTINEZ
United States Magistrate Judge